IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7513 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAKASH @ PAKIYO JAMTARAM DEVASI
Versus
COMMISSIONER OF POLICE AND OTHERS

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Appearance :
MR HN BRAHMBHATT for Petitioner.
MR ND GOHIL, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 05/07/2006

ORAL JUDGMENT

This petition is filed by the brother of the detenue. By filing this petition, the petitioner has challenged detention order of the detenue dated 2-3-2006, who is detained under provisions of Prevention of Anti Social Activities Act (“PASA” for short) as a “dangerous person”. Along with the order of detention, the detenue is also served with the grounds

of detention. In the grounds of detention, there is a reference to three criminal cases pending against the detenue. All these cases are registered against the detenue in connection with theft of Hero Honda motor cycle. The detaining authority also recorded the statements of witnesses, whose names have not been disclosed. After arriving at subjective satisfaction, the detaining authority has passed the order of detention against the detenue.

Mr.Brahmbhatt, learned advocate for the petitioner vehemently submitted that so far as pending criminal cases are concerned, all these cases are under the provisions of the Indian Penal Code and they are individual cases. He further submitted that statements of witnesses have been recorded merely to give life to the detention order. He also submitted that simply because the cases are registered against the detenue, it cannot be said that the detenue has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of the detenue is prejudicial to public order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> "So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an

> order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

Mr.N.D.Gohil, learned AGP is not in a position to substantiate his say that only because the criminal cases are registered against the detenue, the detenue is guilty of violating public order.

In view of the above judgement of the Division Bench of this Court, in my view, so far as pending criminal cases are concerned it can be said that the detenue has violated law and order and registration of aforesaid cases, itself, cannot be said to be an act of violating public order. There is nothing on record to suggest that registration of criminal case may disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality.

Considering the aforesaid aspect of the matter, this petition is required to be allowed and the order of the detention is required to be quashed, as it cannot be said that the detenue has violated public order and at the most it can be said that the detenue has violated law and order.

At this stage, learned advocate for the petitioner has stated that the detenue was released on bail, however, he could not manage for bail bond, therefore, the detenue is in judicial custody at present. He made a voluntary statement that in case the detenue is released on bail, he will not enter the Police Commissionerate area of Surat city upto 30th

September, 2006 except for attending pending criminal cases or for complying with the condition of bail, if any. This voluntary statement is recorded, it is for the concerned authority to monitor the same.

For the foregoing reasons, this petition is allowed. Order of detention dated 2-3-2006 is quashed and set aside. Detenue – Prakash @ Pakiyo Jamtaram Devasi is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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